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TITLE Charles De Felice, et al., Plaintiffs, Against the Board of Education of the City of New York, et al., Defendents. . .[Memoranda Incorporating Findings of Fact and Orders, April 10, 1972 and May 16, 1974; and Memorandum and Order for Judgement, August 8, 1974 Relating to Rezoning of Franklin K. Lane High School, Brooklyn, N. Y.]

INSTITUTION District Court, New York, N.Y. Eastern District of New York.

PUB DATE 74

NOTE 71p.; An appended map of the "Old Franklin K. Lane Zone" has been deleted from this document for reproducibility reasons

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DESCRIPTORS *Board of Education Policy; Court Cases; De Facto Segregation; Dejure Segregation; Free Choice Transfer Programs; *High Schools; *Integration Litigation; Open Enrollment; Public Policy; Racial Segregation; Residential Patterns; School Integration; *School Zoning; Transfer Policy; Urban Schools

IDENTIFIERS Franklin K Lane High School; New York; *New York City; New York City Board of Education

ABSTRACT

Plaintiffs are students enrolled in Franklin K. Lane High School, and they sue on behalf of all others similarly situated for an adjudication that their school has been so zoned as to make and keep it a segregated school in spite of its location. They moved to enjoin further enforcement of the school's zoning. The board moved for summary judgment. Both motions were denied. A hearing was set for May 5, 1972 to determine next steps. The board has sought to secure the advantage of integrated education in the face of an ever more intractible housing pattern by ingenious rezoning and an "open admissions" program, which in Brooklyn is not a large-scale expedient. Lane was apparently not a zone from which a student could apply. The projection for open admissions in 1972 is in the order of 1,700 students. What emerges is a recognition of and orientation toward achieving the educational advantages of integration by striving to offset the consequence of the residential pattern without imposing undue disadvantages and hardships. The consequence, however, is that the board's school zoning is specifically advertent to the existence of racial and ethnic imbalances and to the dilution or deprivation of educational opportunity implicit in it, and in its zoning the board deals insistently and directly with the ethnic composition of the schools; where segregation in an objectively invidious sense is the result, it is "de jure" segregation. (Author/JM)

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UNITED STATES DISTRICT COUET
EASTERN DISTRICT OF NeW YORK

CHARLES De FELICE, et al.,

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

71 C 502

MEMORANDUM incorporating Findings of Fact and ORDER

Appearances:

MORTIMER TODEL, Esq., for plaintiffs

CHARLES D. MAURER, Esq. (J. LEE RANKIN, Esq., Corporation Counsel of the City of New York, and ELLIOTT H. HALPIN, Esq., Assistant Corporation Counsel, of Counsel) for defendants

DOOLING, D. J.

Plaintiffs are students enrolled in Franklin K. Lane High School, and they sue on behalf of all others similarly situated for an adjudication that their school has been so zoned as to make and keep it a segregated school in spite of its location. They moved to enjoin further enforcement of the school's zoning on the ground that it is de jure segregation and to compel rezoning. The Board moved for summary judgment on a record elucidating the racial, ethnic

(7)

and educational problems the Board must solve, the resources it has and their utilization, and the steps taken to ameliorate the educational consequences of de facto housing segregation and to deal with the constellation of more or less attendant problems.

It is concluded that both motions must be denied and a hearing is now set for May 5, 1972, at 2:00 P.M. in Court Room 8 to determine next steps in the light of the present memorandum.

Franklin K. Lane, an academic coeducational high school, is located on the boundary between Brooklyn and Queens but is administered as a Brooklyn High School. The attendance zone of the school now and for some time past has stretched far west of the school building and southward to the Shore Parkway. Just north of the school are, stretching eastward, Forest Park, and, stretching westward, a belt of cemeteries and Highland Park. The zone has not been much changed since 1965. The school population ethnic distribution of the school has been the following:

Year	Capacity	Enrollment	Negro	Puerto Rican	Other
1961	-	3905	923	160	2852
1965	4315	4411	1757	561	2093
1966	4315	4764	2134	492	2138
1967	4315	5136	2411	659	2066
1968	4315	5374	2691	767	1916
1969	4315	4875	2606	682	1587
1970	4315	4924	2767	819	1338
1971*	4358	5121	-	-	1078
1972*	-	5278	3136	963	1179

*Projected

The changes in population composition given in percentages have been the following:

Year	Negro	Puerto Rican	Other
1961	23.5	4.1	72.4
1962	-	-	67.1
1963	-	-	61.2
1964	-	-	52.0
1965	39.8	12.7	47.5
1966	44.8	10.3	44.9
1967	47.0	12.8	40.2
1968	50.1	14.3	35.6
1969	53.5	14.0	32.5
1970	56.0	19.0	25.
1971*	57.2	18.3	24.5
1972*	59.4	18.3	22.3

*Projected

It will be seen that since 1965 at least Lane has been utilized in excess of rated capacity, the percentages of utilization ranging from 102.2% in 1965 to 124.5% in 1968 and to a projected 119% for 1972.

Lane's experience exists in a matrix of city-wide, borough-wide, and Queens-Brooklyn changes. All three show a decline in the number and percentage of "others"

attending academic high schools, and a radical increase in the number and percentage of Negroes and Puerto Ricans in attendance:

1961

	Total	Negro	P.R.	Other	Percents N	PR	O
City wide	198,256	22,270	10,914	165,072	11.2	5.5	83.3
Brooklyn	75,556	7,451	2,709	65,396	9.9	3.6	86.5
Queens	53,618	3,639	408	49,571	6.8	0.8	92.4

1970

	Total	Negro	P.R.	Other	N	PR	O
City wide	246,117	72,563	37,167	136,387	29.5	15.1	55.4
Brooklyn	88,403	28,335	11,462	48,606	32.0	13.0	55.0
Queens	65,649	15,421	2,222	48,006	23.5	3.4	73.1

Residential patterns lie very close to the heart of the problems, and, since the academic high school attendance is on a zoned basis - with certain exceptions- the residential pattern would, self-evidently, determine the ethnic composition of each school's population if the schools were zoned in rigorous obedience to a convenience of access standard. Normally, but not inevitably, that would connote centricity of location for each school.

The Board, however, has sought to secure the advan-

tage of integrated education in the face of an ever more intractible housing pattern by ingenious rezoning, "skip" zoning, in which a school zone is made up of two or more noncontiguous zones, and an "open admissions" program in which students are given an opportunity to elect to attend named schools usually at a considerable distance from their homes but in which students of their own ethnicity are not in a majority. The "open admissions" program in Brooklyn is not a large-scale expedient. As of July 8, 1970, the program visualized 1,892 places as open, and Lane was apparently not a zone from which a student could apply. The projection for open admissions in 1972 is in the order of 1,700 students. The plan is hamstrung by the sharp limits on the capacity of the receiving schools and by the length of the travel distances.

What emerges, then, and in this State, given the views of the Commissioner of Education, the Regents, and the Board itself, is inevitable, is a recognition of and orientation toward achieving the educational advantages of integration by striving to offset the consequence of the residential pattern without imposing disadvantages and hardships that could not be found to be justified in the sought-for educational advantages.

The consequence, with equal inevitability, however, is that the Board's school zoning is specifically advertent to the existence of racial and ethnic imbalances and to the dilution or deprivation of educational opportunity implicit in it, and in its zoning the Board deals insistently and directly with the ethnic composition of the schools; where segregation in an objectively invidious sense is the result, it is de jure segregation and is not an uncured consequence of housing patterns helplessly submitted to as beyond the reach of feasible compensatory planning. Cf. Taylor v. Board of Education, 2d Cir. 1961, 294 F.2d 36; United States v. School District, 7th Cir. 1969, 405 F.2d 1125, 1130-1131; Keyes v. School District No.1, Denver, Colorado, 10th Cir. 1971, 445 F.2d 990, 999. Note Alexander v. Louisiana, U.S. Sup. Ct. 1972, 40 L.W. 4365, 4367.

Here the Lane zone has no school-house centricity. A "neighborhood zone," in the sense of a zone which extended outward from the school-house along routes of convenient access in geographical coherence around the school is not present. Lines drawn in that way to enclose a school distri would radically change the ethnic distribution of the Lane school population. That is evident from the data on the populations of Grover Cleveland, Forest Hills, Richmond Hill

and Jamaica High Schools, all of which are over 60% "other", and from the 1970 census tract data on "General Characteristics of the Population" and "Occupancy, Utilization, and Financial Characteristics of Housing Units." Prima facie, an objectively segregated school zone thus appears to have been established and adhered to in a series of zonings that has tended advertently to reinforce rather than to mitigate the educational disadvantage of an imbalanced school. Cf. Chance v. Bd. of Examiners, 2d Cir. 1972, slip opinion 2547, 2564 (and cases cited therein). Certainly an imbalanced school is not invidiously segregated per se if its imbalance is a result of housing patterns only (cf. Swann v. Board of Education, 1971, 402 U.S. 1,25-26), but that appears to be not the present case. Here, an artificial and irrelevant factor appears to have intruded, the boundary between the boroughs, and to have exerted an unjustified influence on zone planning.

At the same time, immersion in the wealth of data that the Board has furnished demonstrates that the Lane zone is a part of the proverbial seamless web and that alteration of the zone can worsen rather than ameliorate the imbalances that appear to be present. While the data are

given in terms of "Negro," "Puerto Rican" and "Other", it is far from self-evident that the classification is apt even for a "segregation" analysis. The data ignore income class patterns that may be as significant educationally as color and island origin. Quite possibly income class, expressed in neighborhood patterns, is the educational determinant, not color or island origin; the educational disadvantages of the segregated school may well be primarily that its characteristics are determined by the subculture of poverty and deprivation in which it is overwhelmed, and which defeats the motivation toward skill acquisition and denies the students the expectation of achievement that is a factor in begetting it. The language difficulty may present a still different complexity that makes the three-class approach of "Negro, Puerto Rican and Other" even more an unsafe guide to any conclusion. Indeed, it may well be that what is concealed by the three way classification is that the disadvantaged schools are those in the old, shattered neighborhoods that have been, as it were, abandoned to the poor, among whom the Negroes and Puerto Ricans are in these decades most numerous, and the advantaged schools those in the newer or stabilized neighborhoods. But it is

disturbing that on the 1972 projections 33,349 of the 40,703 "others" to be enrolled in zoned schools will be in schools having 60% or higher of "other" population, and that of the 28,935 Negroes to be in zoned academic high schools, 10,408 are to be in schools having 59% or more Negroes in the school population, as well as some number of Puerto Ricans from disadvantaged neighborhoods.

The case does not then permit of summary judgment in defendants' favor nor do the data justify condemning what has been dore without further inquiry.

Accordingly it is

ORDERED that plaintiff's motion for a preliminary injunction and defendants' motion for summary judgment are denied.

Brooklyn, New York

April 10, 1972

U. S. D. J.

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★ MAY 16 1974 ★
TIME A.M.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHARLES DE FELICE, et al.,

Plaintiffs,

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Defendants.

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MEMORANDUM INCORPORATING FINDINGS OF FACT and ORDER

Appearances:

MORTIMER TODEL, Esq.
For Plaintiffs

DORON GOPSTEIN, Esq. (ADRIAN P. BURKE, Corporation Counsel of the City of New York, of Counsel)
For Defendants.

DOOLING, D. J.

Reference is made to the Memorandum incorporating Findings of Fact and Order dated April 10, 1972. The Findings of Fact now made are after trial and are in addition to the findings made in the earlier Memorandum and Order.

The additional data presented at trial are significant in two principle areas. First, they show in a more precise way the relation of the ethnic distribution of the

Franklin K. Lane school population to that of the other academic high schools in Brooklyn and Queens and, second, they show the extent of the educational disadvantage experienced by students at Franklin K. Lane and the limited educational resources deployed and deployable to compensate for and remedy the educational disadvantage of the students' lot.

Extension of the data with respect to Franklin K. Lane backward in time and bringing it down to the trial date requires the conclusion that no substantial change has been made in the boundaries of the Franklin K. Lane school district except as now indicated. In the school year 1969 - 1970 three "skip zones" were cut out of the Lane school district and students from the skip districts were assigned to Franklin Delano Roosevelt High School, Midwood High School and Tilden High School, all of which are in the more southerly and westerly parts of the borough of Brooklyn. A fourth skip zone, Sheepshead Bay High School, was also cut out of the Lane district and these students were sent to a school located far down in Brooklyn in the Sheepshead Bay area. In the school year 1970 - 1971, Boys High School, located in the north central part of the borough was for the first time zoned, and the zoning of Boys High School resulted in

the assignment of a part of the western extremity of the Lane school district to the new Boys High School district. Boys High School in the school year 1969 - 1970 was 87-1/2% black, in 1970 - 1971 was 90.3% black and in the two more recent years has been 89.9 and 90.3% a black school. In addition, of the Boys High School population in the years 1969 - 1972, from 7.9 to 10.9 percent has been Puerto Rican, and in none of those years was as much as 2% of the school population classified as "other".

Statistics furnished by the defendants are, then, that in 1961 the population of Lane was 23.1% black, 4.1% Puerto Rican and 72-1/2% "other". Commencing in 1965 the black population of the school rose steadily from 39.8% in 1965 to 44.8% in 1966, to 47% in 1967, to 50.1% in 1968, to 53.5% in 1969, to 56.2% in 1970, to 57.2% in 1971, to 59.6% in 1972, and to 61.2% in 1973. Meanwhile, the Puerto Rican population of the school likewise increased from 4.1% in 1961 to 5.1% in 1965, and thereafter continued to rise until in 1972 it was 19.9%, and in 1973 was 20.8%. In consequence, the "other" population of the school declined from 72.5% in 1961 to 47-1/2% in 1965, and it has continued to decline

steadily to 20.5% in 1972 and 16.2% in 1973.

The statistics on the population of Lane are not however to be taken as totally descriptive of the situation since the history of school population change is part of the total population change in the academic high schools of Brooklyn and of the population changes in the schools reasonably near Lane in Brooklyn and in Queens. In the period from 1957 through 1971 the "other" population in all academic high schools in the entire city of New York declined from 86.1% to 53.3%. The black population of the schools has in the same period increased from 9.3% to 31.0% and the Puerto Rican population in the schools has increased from 4.6% to 15.7%. In Brooklyn in the period between 1961 and 1971 taking academic and vocational high schools together, the "other" population has declined from 82.1% to 48.9%, the black population has increased from 12.1% to 34.7% and the Puerto Rican population from 5.8% to 16.4%. In all of the Brooklyn academic high schools taken together in the period 1957 through 1972 the figures (Exhibits W and Y) show that the "other" population in all Brooklyn academic high schools taken together declined from 90.2% to 50.1%. The decline in "other" population is a

steady decline without reversal in trend between any two years. It is possible to discern in the figures an increase in the rate of decline for the latter part of the period. During the same period, 1957 through 1972, the black population in all Brooklyn academic high schools taken together increased from 7.4% to 36.5%. Again, the increase in black population is a steady increase from year to year without reversal in trend and the higher year-to-year rates of increase are in the years in the latter part of the period. Over the same period, 1957 to 1972, the Puerto Rican population in all Brooklyn academic high schools combined has increased from 2.4% to 13.4%, and the increase is without change in trend at any time except between the years 1959 and 1960 when there was a small diminution in Puerto Rican percentages which was reversed in the following year.

The figures with respect to the academic high schools in Queens present the same trend but in a radically different degree of progression. The percentage of "other" students in the academic high schools of Queens combined declined from 94.2% in 1957 to 69.3% in 1972. The decline in the "other" population of the Queens schools, as in the case

of Brooklyn, is steady and unreversed in any year, and the percentages of annual decline tend to be somewhat higher in the latter years than in the earlier ones. Over the same period of time, 1957 to 1972, the black population in all Queens high schools combined increased from 5.1% to 26.1% and the Puerto Rican population from 0.7% to 4.6%.

The population trend in the Lane High School is, thus, embedded in a picture of total change both in the city as a whole and within the boroughs of Brooklyn and Queens, and particularly in relation to the academic high schools in each of the boroughs. But the problem is not one of uniform distribution in space, of course, but is one made up of a set of trends and conditions. Very broadly, the concentrations of black and Puerto Rican population in the borough of Brooklyn tend to be in the northerly part of the borough and the concentrations of black and Puerto Rican population in Queens tend to be in the southerly part of that borough. Both boroughs are large from the point of view of daily travel to and from points located at or near opposite ends of each borough and from points well within one borough to points well within the other, and public transportation is not patterned to fit the requirements of school population

attendance and transfers.

It appears to be the fact, and the administration of the defendant Board treated as a factor relevant in their policy making, that there is a relationship between the composition of the population of a particular school and the trend of population in the neighborhood or area which the school serves or is meant to serve. That is, the tendency of people with children of school age to emigrate from the city appears to increase if parents observe that the schools to which they must expect their children to be assigned show an increase in ethnic populations diverse from their own. Hence the administration of the Board inclines to the belief that if the percentage of blacks and Puerto Ricans in a school's population visibly increases, that creates a tendency to accelerate the diminution in "other" population of the school through voluntary withdrawal of "other" students from the school by family emigration or by transfer of students to private or denominational schools. Satisfied that there is such a direct connection between the change in the ethnic composition of a school and the continuation of the more general tendency of people in the "other" classification to emigrate from the

magnet school

city when their children reach school age, or to enroll their children in non-public schools, the administration of the defendant Board sees as a principal resource for retaining a better population balance programmatic and other changes in the educational opportunities offered in particular schools. The schools, if they can be made programmatically attractive, can operate to make family emigration less attractive, and transfer of school age children to other schools less desirable.

An example is recent programmatic changes made at Erasmus Hall High School in central Brooklyn. The "other" population of Erasmus was 90.7% in 1961 and by the 1972 school year had become 35.9% "other", 6.7% Puerto Rican and 57.4% black. A music and art school was designed for the Erasmus operation in an effort to make the school independently attractive, and to draw students from well outside the Erasmus district, since the school of Music and Art would not be "zoned". Similarly, in Tilden, which is somewhat east of Erasmus and on the Brooklyn midline, the "other" population declined from 97.9% in 1961 to 59.6% in 1972, with 35.1% black and 5.3% Puerto Rican. A school of political science was designed on the same unzoned basis to draw students

skip zones

from outside the zone into the Tilden High School.

The problem of imbalances, has been dealt with more directly, however, by three now familiar expedients. The first of these is, of course, to rezone in such a way as to extend school districts as much as can be done to achieve whatever balance sheer geography can supply. A second expedient has been to establish detached or "skip" zones in neighborhoods which were considered ghetto neighborhoods for schools sometimes rather far distant; the ghetto students living in the "skip" zone are then able to attend schools in which their own racial or national stocks are a minority. Skip zoning was perhaps at its height in the school year 1969 - 1970, when there were in Brooklyn skip zones not only for the Brooklyn schools in the southern part of the borough but also for Richmond Hill High School. And in the school year 1970 - 1971 both the Bryant High School in Queens and Richmond Hill High School had Brooklyn skip zones and South Shore High School in Brooklyn had a skip zone from a more northerly part of the borough of Brooklyn. In the 1972 school year, there were no skip zones as between school districts within Brooklyn but there remained in the northern part of Brooklyn skip zones for

three of the Queens high schools, Bryant High School, Grover Cleveland High School and Richmond Hill High School.

In addition to the skip zones, there was also an optional program under which students in junior high and intermediate schools who are ready to enter high school are offered the option to apply instead for admission to another high school outside their own high school zone. The program was offered to graduates of selected intermediate and junior high schools in the Erasmus High School zone, the Thomas Jefferson High School zone, the George Wingate High School zone, the Franklin K. Lane High School zone, the Boys High School zone, and the Eastern District High School zone. Under this program, students were permitted to list their choices of certain other high schools and to the extent of seating availability they could then be assigned to schools other than the ones into which they were zoned. The numbers involved have not been great. It approximated 2,000 students; taken with the enclave or skipzone program under which Brooklyn students are sent to Queens high schools, in the 1972 school year, 2,307 students, in total for the four years of high school, were affected. The whole effort is modest,

but it is intended to affect the schools which stand most in need of a redressing of imbalances, to the extent that it is practicable.

A third approach pursued by the Board to some extent is implicit in fixing the location of new schools. For example, in Queens the program would visualize that new high school buildings would be located in the middle part of the borough and then would be zoned to draw students both from the southerly part of the borough, where black and Puerto Rican students were living in greater numbers, and from the northern part of the borough where students in the "other" classification greatly predominated. Such a school, typically, was the Hillcrest School built fairly close to Jamaica High School and with a school district that extended well to the north and well to the south. Similarly in Brooklyn, newer schools were located in the middle part of the borough, and no new schools were opened in the northerly part of the borough. The effort was in this way to bring about a necessary zoning which would relieve imbalance by locating schools in areas in which the school populations would necessarily be drawn from neighborhoods having very different racial and ethnic compositions.

The integrating effect of such a siting policy, however, tends to dissipate during the period of delay between planning and actual opening a school because population shifts occur during the interval. When the schools open they at times have a population mix already heavily tilted against the "other" group.

More recently, the tendency of the administration is to plan on building the schools where the students are and to rely on other means of coping with the educational problem. In part, this reflects resignation to the idea that the enormous size of the New York City school district, considered as a single consolidated school district, tends itself to defeat the zoning effort because of the great extent of the imbalanced neighborhoods and the relatively few neighborhoods that approach being integrated residentially. This fact, coupled with the emigration of parents with school age children which drains "other" population from the city schools into suburban schools which are imbalanced in the opposite direction, creates a situation which the Board of Education is powerless to rectify by its own local action.

Given the overall imbalance problem with which the defendant Board is confronted, there nevertheless remains a substantial area for controversy over what has been done in zoning and rezoning within the city itself. The population statistics for each of the academic high school zones in Brooklyn and Queens make it quite impossible to see and explain the shifts in school population, but it remains true that there are extremes of imbalance in both directions. The school districts contiguous with that of Lane in Brooklyn are Bushwick, Boys and Jefferson. Canarsie, South Shore, Tilden and Wingate High Schools have districts portions of which are not more distant from the Lane district than are the remoter parts of the Bushwick and Jefferson districts. Of the Brooklyn schools with contiguous districts, Bushwick is 17% "other," 47% Puerto Rican and 36% black. Thomas Jefferson has 5.1% "other", 27.7% Puerto Rican and 61.2% black, and Boys High School, the third contiguous territory school has 1.8% "other", 7.9% Puerto Rican and 90.3% black. The schools next farther removed are Canarsie and Wingate. Canarsie has 61.8% "other", 9.1% Puerto Rican and 84.9% black. The next more remote schools to the southwest are South Shore and Tilden. South Shore is 65.5% "other", 4.3% Puerto Rican and 30.2%

black, and Tilden is 59.6% "other", 5.3% Puerto Rican and 35.1% black. Still farther away, Erasmus has 35.9% "other", 6.7% Puerto Rican and 57.4% black and Midwood has 71.3% "other", 2.6% Puerto Rican and 26.1% black.

The schools which have districts either primarily or wholly in Queens that are contiguous to the Franklin K. Lane district are Grover Cleveland which lies, in the main, north and north of the westerly end of the Lane district, Richmond Hills, which lies in the main east of Franklin K. Lane, and John Adams, which lies to the south and southeast of Lane district. The 1972 school year population at Cleveland is 85.3% "other", 4-1/2% Puerto Rican and 9% black. (At an earlier period when it had substantial enclave students from skip zone territory in Brooklyn, Grover Cleveland had had, in the 1967 and 1968 school years, 31% black and in 1969 23-1/2% black and in 1970 14.1% black). Richmond Hill High School is 62.8% "other", 8% Puerto Rican and 29.2% black. John Adams High School is 74.2% "other", 5.5% Puerto Rican and 20.3% black. Cleveland and Richmond Hill are roughly the same size, about 3000 students in capacity terms, and John Adams has a capacity of 4,133; Cleveland is 138.8% utilized in the current year, John Adams, 124.8% utilized,

and Richmond Hill 118.0% utilized. Lane has a capacity rated at 4426 and is 111% utilized.

Beyond the contiguous Queens school districts are the districts of Newtown High School, Forest Hills and Hillcrest High Schools. Newtown High School in the current year has a population which is 86.6% "other", 3.3% Puerto Rican and 10.1% black. The capacity of the school is 3534, its utilization 134.1%. Forest Hills High School is 84.5% "other", 2.2% Puerto Rican and 13.3% black. Its rated capacity is 2830 and it is 109.4% utilized. Hillcrest High School, operating since the 1971 school year, is 56.2% "other", 8.4% Puerto Rican and 35.4% black. Its capacity is 3234 and it was in the 1972 school year utilized 99.3%.

The Queens and Brooklyn zoning maps and the school population data demonstrate that there could be any number of alterations of the Franklin K. Lane boundaries, and that if its boundaries were changed, the population of the school would reflect very different ratios between black, Puerto Rican and "other" students. That would necessarily alter the ratios in every other school in the area. Specifically, the indication is that the most obvious changes in the Lane

district -- to shorten the westward extension of the district into Bedford Stuyvesant -- would have first impact on the nearest Brooklyn schools, Bushwick, Boys High, Wingate and Jefferson, all of which already reflect an "other" population which is lower than that of Lane. Beyond them are the Canarsie, South Shore and Tilden districts which do have radically higher percentages of "other" population (59.6% to 65.5%) and Erasmus which at present has an "other" population of 35.9%. In the direction of Queens, north, east and southeast, plaintiffs have contended that transfers of school population should be effected through making a part of the territory in the westerly end of the Lane district part of the Grover Cleveland district and extending the Lane district northward into the Grover Cleveland district, and by extending the Lane district east and southeast into the Richmond Hill and Adams districts.

The administration of the Board does not object in principle to rezoning, or to rezoning with a view to redressing imbalances in ethnic and racial distribution. The administration of the Board accepts as principles underlying school zoning that they should operate to promote better

utilization of the high schools available, to further racial integration, to recognize geographical factors (such as proximity of the school to its students, natural boundaries, and major traffic arteries), to take account of the availability of transportation facilities, and to insure the continuity of the education of the students. It is recognized by the Board that a key element in quality education is integration.

While there must be unqualified recognition of the immense difficulty which the Board of Education faces in rezoning schools, the conclusion is compelled that the Lane school district does not as it presently exists reflect equality of treatment with the other school districts which are in its region. It manifests unexplained and unwarranted imbalance in circumstances in which the composition of the district implicitly reflects failures to act upon recognized principles elsewhere applied in school zoning in the city. Repeated adherence over a long period of time to the Lane boundaries, continuing after the pendency of the present action had sharply drawn the situation to the attention of the Board, reinforces the conclusion that there must be a

final order requiring the redistricting of Lane in such manner as substantially to redress the present imbalance.

There has been repeated reference to the measures already taken to redress imbalance of Lane and these have come down really to two things. First, the consequence of zoning Boys High, which resulted in cutting off the most westerly part of the Lane district, and, second, the participation of Lane in the open admissions program. However, the effect of these two expedients has not been materially to change the situation at Lane, as the statistics demonstrate. The open admissions program, while not derisory, is not a substantial help, as Exhibit 5 shows. The students in effect offered the opportunity to transfer out of Lane numbered 401 in the school year 1969 - 1970, 269 in the school year 1970 - 1971, 155 in the year 1971 - 1972, and 156 in the year 1972 - 1973. These figures are in one sense cumulative, since they reflect the yearly offer of open admission opportunity to students who would otherwise have been registrants in Lane, but while the evidence does support a finding that such open admissions opportunities are usually fully taken up, that is not absolutely certain, and, again, reference to the school population trend of Lane itself indicates that the open

admissions expedient has been an inadequate palliative.

It has been strenuously pointed out by the Board that the ultimate and ultimately underlying issue in such a case as that of Lane, is the problem of adequacy of education; that the goal is to give every child a realistic opportunity to be appropriately educated, and to deal with the city's educational problems in honest confrontation with the real educational needs, and, by exploiting the educational opportunities that can be created, to satisfy genuine educational needs in a way that is appropriate to the nature and extent of the needs of the student body. The Board's emphasis is on its duty and its attempts to deal effectively and imaginatively with the school population which the city has, and which it will continue to have no matter what is done with zoning and rezoning, and through striking new balances of race and national origins in the schools. Whatever is done, it is the city's underlying insistence, the students who are regarded as the victims of imbalance must be educated, and they must be educated in a way that deals constructively with their educational needs.

The Board, accordingly, has emphasized that much is done to make available to Lane, simply because it is the kind of school that it is with the population that it has, much that is not made available to other schools, and it has emphasized that more effective and imaginative administration within the school, given the autonomy that each high school principal is given, could very materially improve the education offered at Lane.

Reference must be made to Exhibit A, a set of profiles of the city high schools based on data of the year 1970 - 1971 in the main, to illustrate the Board's point and to underline its limitations. Turning first to the profile of Franklin Lane, pages 66 - 67, the problems of the school with its present population can be seen at a glance. The percentage of attendance at the school is 58% as distinguished from city wide attendance of 77%. Pupil transiency is 61-1/2% as against city wide transiency of 45.2%. 49% of the pupils read two or more years below grade level; the corresponding percentage for the entire city is 29.6%. The numbers graduating and receiving diplomas is so small in terms of the total school enrollment that it can only be regarded as

disheartening. Moreover, other data presented at the trial require findings that actually the input to Franklin Lane is to a very considerable extent made up of children who are seriously handicapped from the educational point of view.

The trial evidence presented Lane in an even worse light than the 1970 - 1971 profile threw on it. Plaintiffs' evidence was that 70% of those entering Franklin Lane who took a standard test were in the bottom 23% of the entire number of students taking the standardized test. The test, variously referred to as minimum competency test, etc., is designed to measure the student's adequacy upon entrance to deal with high school work. In more specific terms: in October 1971 about 775 or 800 of Franklin K. Lane's 9th year entering class of 1350 took the Metropolitan Achievement Test. Of those who took it 70% were below minimum competency in reading by the State standard; 70% fell in the bottom 23.7% of the State grouping. The opinion was expressed, and, of course, could not be tested, that the result would not have been better had all of the entering class of 9th year students taken the test. For general purposes, it appears to be assumed among educators concerned with New York City educational

problems, that the reading achievement test is the most valid measure of entering competency.

Returning to the school profiles of Exhibit A, reference can be made to the distinguished schools in the system, as illustrating the extreme of what is accomplished with children apparently highly motivated and achievement oriented. In the High School of Music and Art, with a population 24.3% black, 9% Puerto Rican and 62.9% "other", the percentage of attendance is 87%, or 10% above city wide average, and pupil transiency is at 17%, or considerably less than half the city wide average; only 2.6% of the students are two or more years retrograde in reading (less than a tenth of the city wide percentage); 88% of the graduating class were applying to four year colleges, 6% to junior or community colleges and 10% to other institutions (the statistical discrepancy is unexplained in Exhibit A). Stuyvesant High School, which is on east 15th Street, has 94% attendance, only 12% transiency, and 97% of the school population were applying to four year colleges and 3% to junior or community colleges. The school population is 79.5% "other", 10.3% black, 6% oriental and 3.4 % Puerto Rican. Bronx High School

of Science has a percentage of attendance of 92%, 8-1/2% pupil transiency, and no students reading two or more years below grade level; 97.4% of the graduating class received diplomas, and 100% of the graduates were applying to 4 year colleges. Brooklyn Technical High School had a 95% attendance, 19.8% pupil transiency, 1/10 of 1% of the students read two or more years below grade level; 90% of the graduates were applying for four year colleges, 7% to junior or community colleges and 3% to other institutions; the composition of the school is 76.6% "other", 12.3% black, 6.2% oriental, 3.9% Puerto Rican, and 1% students having Spanish surnames not identified as Puerto Rican.

The defendant Board emphasized indirectly that its deepest concern is, and in its judgment should continue to be, with educating the children in whatever schools they are and whatever the ethnic and racial composition of the school population. The emphasis which its evidence insisted upon was on the educational significance of school population rather than the abstraction of racial balance divorced from a concern with the educational problems presented by the school. From the Board's point of view, as elaborated in the evidence, Lane is first and foremost an educational

problem and as an educational problem, a testing and proving ground, as, evidently the Board considers, every high school must be which has an ineluctable school population problem to deal with. It is only too apparent that the Board is looking toward a future in which, city-wide, the composition of school populations, reflecting demographic trends within the iron boundaries of the city itself, will intensify the difficulties and multiply the complexities of the educational problems the schools present. The Board has evidently reconciled or resigned itself to the view that the entire school population of the city will be in marked imbalance from an ideal point of view because of the exodus from the city of parents with children of school age who yet continue to be a part of the total metropolitan economy. The picture which the Board sees is, therefore, one in which the city, unable educationally to go beyond its own borders, will not have a representative school population in terms of the entire working population of the city and of the greater metropolitan area. In consequence, it is the Board's visualization that there must be increasing readiness to deal with new and imaginative programs designed to cope with the kind of factors that are displayed by Franklin K. Lane, and all too many of the other high schools

under the Board's supervision within city limits. These will be increasingly characterized, apparently, by high truancy rates, the constant threat of early school leaving and, very likely, a radical shift from regarding the academic high schools as performing their traditional role as college preparatory schools for four year colleges.

Hence, from the point of view of the Board, what must be and is done, to the extent that resources permit, is to bring to bear upon Franklin K. Lane -- because of its school population problem -- guidance services and supplementary services made available out of tax levy and reimbursable funds through allocations which take account of the educational problem that registrants in Lane present. The data showing the distribution of such funds are given in Exhibit A in Appendix B on pages 196-197 and in Appendix D at pages 202-204 (these two pages continue each other and page 203 should follow them), Lane is shown in Appendix D, page 202 to have 28.6 tax levy guidance service positions and 4 guidance positions from reimbursable funds (State and/or Federal), makin a total of 32.6 guidance service positions, a ratio which is far better than that of most other schools. It will be seen that only Charles E. Hughes, George Washington, Haaron and

Louis D. Brandeis have higher ratios than Lane and each of these schools is, like Lane, one which has serious population problems characterized by reading deficiency, low pupil attendance and radical racial or national imbalance. (The separate profiles of the schools are given for Hughes at page 8, Washington at page 10, Haaron at page 12 and Brandeis at page 18). Appendix B at page 196 shows, in effect, the funds allocations to Lane in terms of costs per subject-period of tax levy and total funds (that is, including reimbursable funds), and the ratio of pupils to teachers in terms of subject periods. It will be seen here that Franklin K. Lane's ratio is again advantageous, although not the best. The allocations of funds (explained in the early pages of the book) is based on a set of formulas which take account of objective data related to need for supplementary teaching positions and other services. A survey of the formula amounts, given at pages viii and ix, shows that the amounts that can be allocated in terms of class size reduction, or improving the ratio of instructors to students, are at best modest in the extreme. Thus guidance services are allocated in terms of one guidance position for each 390 pupils retarded two years or more in reading; the standard allocation is one to 460 pupils.

Teacher allotment for students retarded more than two years in reading is based under the formula on an average class size of 29.5; for other pupils the allotment is one for 31.5 students.

A great deal is no doubt done for Lane, and, within the school, as the principal has outlined it; a number of programs have been initiated which seek to work, from the school as it is with the population that it has, in the direction of giving the student population the kind of education that is suited to their needs and desires, and which seek to orient the educational effort to the actual life situations of the students, their tendency to truancy and early school leaving, and their fundamental human bent toward seeking employment and employment opportunity.

Special programs in operation at Lane which are addressed to the educational handicaps of the student body are several in number. The one most frequently referred to is the "College Bound" program, which is a reimbursable program and has some federal funding. It embraces an aggregate of about 300 students drawn from three different school years and is intended to give special assistance and a more intense educational experience to students of promise who nevertheless

have some educational handicap. The program devotes double the usual amount of time to English, and the English class-sizes are put at twenty. Social studies classes are set at fifteen to eighteen, mathematics and science classes at about fifteen. It appears that the program has successes, but the principal of Franklin K. Lane High School points out that a very much larger proportion of the school ought to be receiving precisely the College Bound kind of more intense educational effort. From the principal's point of view the present College Bound program illustrates what can demonstrably be done with considerable success, and what should, therefore, be done for a very much higher proportion of the school population.

A second program is "Towards Upward Mobility" which embraces some one hundred students. It is addressed to encouraging students to continue in school, and it establishes a tie between work in the outside world and in-school education.

A smaller group, some 20 to 25 students are in the STEP program (School To Employment Program). The program again attempts to integrate school education with reference to real-life working. A group is engaged in Homework Helpers.

The students engaged in this program are in effect compensated for supplementing public assistance kinds of services rendered to impoverished homes. Some 75 to 100 students are engaged in the Franklin K. Lane Urban Affairs Program which uses a modified curriculum and emphasizes the link between school work and employment with particular reference to public employment in city departments as well as in industry and commerce.

A program identified at first as a vestibule and later as a venture program was designed with particular attention to the problems of, and reflected by, students who truant. The program utilizes a shorter school day, two teachers to a class, and a smaller class registration, together with a loose program of work-study, again oriented toward city work. The register of the program is 1,000, but as a practical matter it deals with but 300 students at a time who in effect rotate through the program cyclically. There is a key teacher assigned for the entire day and a second teacher is available for one period a day. There are eight groups of 130 each, and 16 teachers in the total program.

On the other hand an experimental program of some promise, which has in part been under test at other high schools visualizes the establishment within the administration of a single high school of "alternative school". It would enroll 125 or so students with a teacher-to-student ratio of 1 to 25, with one additional teacher assigned to the entire group. The program would preferably seek premises outside the school building, so that the group could be educated together away from the principal school building in the interest of having a separate entity and an individual esprit. The programming of work and study in the alternative schools would be characterized by independence from the prescribed curriculum, but it would constitute an alternative curriculum and not a rejection of high school type education. The effort is to develop under the general supervision of the high school another kind of institution and another approach to learning and teaching for those students for whom the established schools and school curriculum do not work. It is visualized that the alternative school could be the focus of an effort which could attract special help from tax and reimbursable funds. It would be feasible, for example, for an alternative school to make special use of reading components set up for remedial

work in the reading area with State assistance. The alternative school approach would not be a way of disposing of unwanted students in the interest of those remaining in regular instruction, but of attacking directly the task of working effectively with students who, for whatever reasons of background, motivation or interests, are not responsive to regular curricular instructions but whose capacities and bent will respond to differently planned educational effort. A number of alternative schools have been set up including several at Boys High School, but while Lane projected schools and carried the planning a good distance, there was no effectiv follow through, in part because sites away from the high school building were not obtainable -- possibly because of slow response from the Board in taking advantage of the school administration's location of the site considered adequate.

The nature of the special programs proposed or initiated for Lane throw a good deal of light on the nature of the educational problems faced by the City of New York with its present school population, and on the resourcefulness with which the educational problems are sought to be solved effectively by planning in terms of the school population as

it is. The approach recognizes the handicaps, the needs, and the native orientations of the school population as valid, and as marking out areas calling for educational response, and not for rejection in favor of an imposed stereotype of what the high school student should be and be made to become.

But the very emphasis given in the Board's evidence to what might be done at Lane, in addition to what is being done, hardly answers the zoning question that Lane presents. On the contrary, it rather emphasizes that Lane represents a place upon which imaginative programming must be trained simply and because in some very considerable part, it has become a victim of zoning boundaries. Much that is imperatively needed at Lane in the way of supplementation of normal school position allocations and so on would appear inevitably to sap the strength of the total educational effort of the school no matter how effectively the school employed fresh programming, because the inescapable truth is that there are not nearly enough resources in the entire City educational system to deal adequately with its total educational problems. The consequence is that, to an extent which is clearly revealed in the 1970-71 school profiles, the special programs and the remediation is

in part effected at the expense of classroom teaching and the preservation of optimum student-teacher ratios throughout the system. The special programs call for special positions, and special positions and supplementary assistance are simply not in existence in the numbers needed. The consequence is that they are, however surreptitiously, plainly borrowed from teaching staff. The consequence of that in Lane's case appears to have been the steady weakening of the regular academic program and the drying up of courses once offered. Although the need for such course work may have diminished as other programs have been attempted because of the shift in the composition of the school population, the general impoverishment of total educational effort is nevertheless present.

While it is neither demonstrable nor, certainly, quantifiable, the administration of the school is satisfied that a consequence is that Lane suffers in reputation and, in consequence of that, is the victim of subterfuges which deny it the better qualified students who might have registered in Lane if its reputation had not become what it has become. It is suspected but cannot be demonstrated that students who live in the Lane zone use the addresses of relatives, or

actually go and live with relatives who are outside the Lane district, so that they can avoid attendance at Lane and go to other schools. It is not possible to say that the intuition of the school's administration is unrealistic or impractical.

The Board has pointed out that in a certain sense capital relief is at hand for Lane in the planning of three new high schools. North Central, which would be located between Madison and Midwood High Schools, a new school at Atlantic and Schenectady Avenues, which would replace Boys High School and draw additionally upon the western end of Lane's district, and a Northeastern high school to be built in the Bushwick area, and which might be used to replace Eastern District High School altogether. The North Central High School is projected to open in 1974. The school to be located at Atlantic and Schenectady Avenues is under construction and while its projected completion date was 1974 it is already apparent that it will be late in completion. The Northeastern unit in the Bushwick area is more remote in time. The existence of the projects of course is relevant to the consideration of the Lane situation, but when the schools are ready to go on stream the resources that they will bring to the educational problems

will be additional and will not be any more effective, or useful to Lane, if zoning patterns are frozen until they open either in the case of high schools generally -- and that has not been the Board's practice -- or in the case of Lane.

The Board has suggested that in part Lane's problems stem from its insistence upon the maintenance of a single session school. The Board contends that the single session school complicates the security problem at Lane because it means that there are more occasions, such as luncheon sessions, at which security problems tend to erupt or to be concentrated. The Board suggests that end to end sessions at length would reduce the frictions that the school presently has internally and with the neighborhood. The school's administration on the other hand insists that the parents of the students and the people in the community in which the school is located are resistant to anything approaching end to end sessions because of the late hours such sessions impose on the students who have to travel home after the second session, and, from the community point of view, would maximize their frictions with the school population. The question of single session, overlapping session, and end to end session must be considered

as under continuing review by the school administration and the Board. The very terms of the discussion indicate that to some extent it is related to the zoning problem itself which can in one sense be expressed as involving the problem of a school with a very high ratio of black and Puerto Rican students travelling from a distance into a school located in an area which at least in the immediate environs of the school is predominantly "other" than black and Puerto Rican.

The most recent of the intensive studies of the school has brought about the development of a $50,000 grant for redesign of school programming; again, that effort is not related to zoning, but to dealing with the consequences of the concentration of educational problems in Lane which may itself be in some part a consequence of inadequate zoning. The same meeting between school and Board officials that gave rise to the grant touched on work already under way on the security program; some of that work originated in the student body itself, through the suggestion of a school-marshal program; attention is currently and recurrently given to the further exploration of the possibility of working out some program looking to diminished use of outside security forces,

including the police, in favor of school self-discipline.

The case is one in which the unmistakably advertent action of the Board over the years has countenanced and sought to compensate for a known and intensifying racial and ethnic imbalance in Lane, but has failed to accord the school districting that can be justified by any standard relevant to educational or neighborhood or geographical considerations or to overriding community interests or to continuity in education. There remains no justification for the skewed district and its direct effect in producing an imbalanced school population. While the Lane district extends into Queens, it remains a fair inference that an artificial and unwarranted effect has been produced by treating Lane as a Brooklyn school to be districted primarily in a pattern for Brooklyn schools rather than as part of the complete pattern of all the schools, without reference to borough lines or borough-oriented administrative organization. Cf. Swann v. Charlotte-Mecklenburg Board of Education, 1971, 402 U.S. 1, 27-29; Lee v. Nyquist, W.D.N.Y. 1970, 318 F.Supp. 710. Note Pride v. The Community School Board, 2d Cir. 1973, 488 F.2d 321, 325.

As the redistricting of Lane affects other schools necessarily, and must impinge on the annual redrafting of school district boundaries, counsel are directed to submit on notice of ten days orders providing for the redistricting of Lane within the pattern of the pending redistricting. Such orders are to be served, with such ten days notice of settlement, within thirty days of the date of this order.

It is so ORDERED.

Dated: Brooklyn, New York
May 16, 1974.

18 U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK.
- - - - - - - - - - - - - - - - - - -x

CHARLES DeFELICE, et al,

Plaintiffs,

- against -

BOARD OF EDUCATION, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - -x

No. 71-C-502

MEMORANDUM and ORDER
for JUDGMENT

Appearances:

MORTIMER TODEL, Esq., for plaintiffs

DORON GOPSTEIN, Esq., (ADRIAN P. BURKE, Esq. Corporation Counsel of the City of New York, of Counsel) for defendants

DOOLING, D. J.

The decision of May 16, 1974, directed the Board to submit a rezoning plan within thirty days, on ten days notice to the other parties. After telephone relays to all Community School Districts and High School Principals in Brooklyn and Queens, in order to advise them of public meetings scheduled for May 24 and May 31, 1974, the Board sent invitations and copies of the May 16 decision to them, to every local school board in Brooklyn and Queens, to all City, State and Federal legislative representatives in Brooklyn and Queens, to the Borough Presidents, and to leaders of the major parties. Joint meetings of the Board's Zoning Unit and High School Division discussed approaches to the same problem, and on May 24, 1974, a public meeting was held, attended by some 250 civic and political leaders, school principals, headquarters staff, personnel, parents and representatives of parent associations. A wide-ranging expression of views resulted. The meeting was followed

by drafting sessions participated in by the Board's Zoning Unit and High School Division, and on May 31, 1974, a second public meeting was held at which the draft plan dated May 30, 1974 was presented, about 200 copies of it distributed, and dozens of expressions of view were received. The meeting was attended by about 200 parents, as well as by political leaders, school principals and representatives of parent associations and civic associations. Following the meeting the plan was re-drafted and, meanwhile, the Board applied for an extension of time of one month in order to allow time for the maximum possible consideration of views expressed on the plan, and with a view to withholding submission of the plan until after the reconstitution and enlargement of the Board on June 30, 1974. Accordingly, by a supplemental order of June 21, 1974, time for submission of the plan was extended until July 15, 1974. That order also indicated that a hearing on the final proposals of the parties would have to be held on notice that afforded an opportunity for a responsible public expression of views. With the Board's active assistance in obtaining the names of those who had manifested an interest in the re-zoning of the school including the public officers and legislative representatives, a hearing on notice to all parties believed to have an interest was scheduled for August 2, 1974.

During the entire period through the date of the hearing held on August 2 and 5, 1974, letters from individuals, parents' associations, parent-teacher associations, and civic and neighborhood groups were received in court, as well as petitions bearing a very large number of signatures -- numbering, for example, in the case of a petition submitted in the name of residents in the Middle Village area (but including also parts of Maspeth, Glendale, and Elmhurst) over 3,900 signatures. Numerically, the communications opposed to adoption of the Board's plan preponderated. It

is not possible to determine in most cases the basis of opposition or the extent of it. A number of communications, however, favored the Board of Education's plan, and a great many of the communications received emphasized that over the years Lane has acquired the reputation of failing to perform an adequate educational job and presenting serious disciplinary problems, and that, in consequence, it has not been and is not regarded by those in the Lane zone who might otherwise have sent their children to the school, as an available educational resource.

A very considerable number of communications have clustered around an affirmative proposal for a different approach to the problem presented by Lane. That proposal, identified as the "Coalition Proposal," was put forward by the South West Queens Educational Alliance (representing 22 schools), the Presidents' Panel of District 24 (representing 24 schools), the Parents' Associations of John Adams High School, Richmond Hill High School and Grover Cleveland High School, the Home School Coalition of District 24, the District 27 Parents Federation, the Cypress Hills Community Block Association, the Woodhaven Residents Block Association, Associated Organizations representing Ridgewood, Glendale, Middle Village, Maspeth and Liberty Park, and the Italian-American Civil Rights League.

The attached map shows the Franklin K. Lane zone as it now exists; it shows also (at the west end) the portion of the present zone that would be deleted under the Board's plan, shows on the north side of the existing zone the areas that would be added from the present zones of the Grover Cleveland and the Richmond Hill High Schools to form the new Lane zone, and shows at the southeast corner the area that would be added from the present John Adams High School zone under the Board's proposed plan. Also shown on the map, for convenience, is a wedge shaped

area south of the area the Board would delete from the present Lane zone: that is an additional deletion recommended in the Coalition Plan.

The plan proposed by the Board would, it is estimated, result, in each school year, in sending 600 prospective registrants from the deleted area to one or another of eleven other high schools or vocational high schools from among which the re-assigned students would have to make a limited and supervised choice. The option schools are Forest Hills, Newtown, William C. Bryant, Grover Cleveland, Franklin D. Roosevelt, James Madison, Sheepshead Bay, New Utrecht, and Lafayette High Schools and Edison and William Grady Vocational High Schools. Under the Board's plan there would be added to the Lane zone portions of the present attendance zones of Grover Cleveland, Richmond Hill, and John Adams High Schools; from these added areas it is estimated that Lane would gain 570 registrants in each school year. The result would be an estimated net reduction of 30 Lane registrations in each year.

The purpose of the changes would be to remove from the Lane zone students from the segregated neighborhood at the west end of the present Lane zone and to add to the school areas that were either integrated or were very predominantly made up of "other" population. Under the Board's plan no student now attending any of the high schools affected by the re-zoning and re-assignment changes would be transferred from the high school in which he or she is now attending to another high school. Students now attending Lane will complete their high school education in Lane, and students now attending Grover Cleveland, Richmond Hill and John Adams High Schools will finish their high school education in their present schools. The Board's plan would, therefore, take four years from the first registration changes to come completely into effect.

The Board estimates that if its plan were put into effect with the first changes in assignment registration occurring in the fall of 1975 the percentage of "others" attending the school would increase from the present 16% to an aggregate of about 50% in the school year 1978-1979 through intermediate stages of 32% "other" in the school year starting September 1976, and 39% in the school year starting September 1977. Under an alternative implementation scheme the Board estimates that it would achieve the same ultimate goal of 50% at the same date, but no students would be introduced from the added areas until the school year commencing in the fall of 1976. The alternative implementation plan would give the school 31% "other" in the year starting September 1976, 42% "other" in the next year, and 50% "other" in the year starting September 1978.

Since the Board's plan postulates subtracting certain areas from the present Grover Cleveland, John Adams and Richmond Hill zones and the assignment to Grover Cleveland (among the option schools) of children from the deleted part of the Lane zone the "other" population of the three schools will be reduced. The Board estimates that by 1978-1979 the "other" population in Grover Cleveland will decline from the present 81% to 70%, that of John Adams from the present 74% to 70%, and that of Richmond Hill from the present 64% to 60%. The Board estimates, too, that over the four years Grover Cleveland's utilization will decline from the present 158% to 143%, Adams' utilization would be diminished from 136% to 114%, and Richmond Hill's utilization would diminished from 114% to 108%.

In each school year the Board's plan, it is estimated, would add to Lane 45 registrants from the Richmond Hill addition to the Lane zone, 321 applicants from the Grover Cleveland addition to the Lane zone and 204 students from the Adams addition to the Lane zone.

Basic to the Board's plan is a scheme of implementation, which is presented in two alternatives, together with a supplemental but distinct plan for re-designing the educational programs to be made available at Lane. Because of what the Board considers to be the difficulty of any earlier implementation of any part of the plan and the risk that implementation would start out in a damagingly inadequate way, the Board would not commence the implementation of geographical and attendance changes until the school year commencing in September 1975. Both implementation schemes of the Board would continue the existing zone of Lane for the year commencing September 1974 (with only very minor changes from last year's zone*) and both contemplate the admission to Lane of a regular entrance class as heretofore. Commencing in the school year 1975, under the Board's preferred implementation scheme, no new students would be admitted to Lane at all. All children (estimated at 1,200) in the existing Lane zone would be distributed among the eleven schools listed above and would complete their High School educations in those schools, or in unzoned special schools of their choice. The students would be placed in the high school of highest priority of choice to the extent feasible. (There is a procedural program for effecting such a distribution with the assistance of data processing equipment which has been used in an optional choice program affecting the assignment of some 2,000 students in southeastern Queens among eight Queens high schools somewhat distant from the areas of residence of the students.) In the second year (starting September 1976) of the scheme a new class would be admitted to Lane from the new zone. In principle the new class would be admitted into both ninth and tenth years and those classes would be integrated in the sense that the "other" population would be in the order of 50-51%, reflecting the "balance" derivable from the population of

the revised zone. In the next year, starting September 1977, a further class would be admitted from the new zone, and so, again, in the next year, 1978-1979; in that school year all four classes in attendance would be made up of identically integrated classes of approximately 50% "other" population. The scheme, although it would defer new-zone admissions to Lane for two years, would, in the Board's view, achieve the 50% "other" goal of desegregation for the whole school as quickly as its alternative scheme which would start admissions from the new zone in September 1975; the preferred scheme, in the Board's view, would have the advantage that in the first year of admissions from the new zone, that is, in September 1976, there would be a dramatic and publicly visible change in the percentage of "others" in attendance, and, it is hoped, a reduction in what is believed to be the substantial loss of "other" population from Lane's own existing district resulting from the imbalance in the present-day population of Lane. There will also have been an opportunity for community contacts under the Board's Educational Redesign Plan for Lane and for enhancement of the Lane Educational Program both intrinsically and visibly. The Board's preferred implementation scheme would imply an under-utilization of Lane in the school years commencing September 1975 and 1976, but, overall, the utilization of Lane would not substantially change from its present 100% when the entire program reaches completion after four years. At that time, it is thought, the register of Lane would be 4,422 students as against 4,365 at the present time, a utilization rate of 101% as against the present 100%.

The alternative scheme incorporated in the Board's plan would admit students from the whole of the new zone commencing in September 1975 and continuing thereafter until completion. In the

first year, admission would be at the ninth year level only(as distinguished from the first alternative in which in the first year of admissions, September 1976, admissions would be from the feeder schools at both the ninth and tenth year levels).

As an adjunct to the Board's rezoning plan, but independent of it, since in principle it could function without any zone change, the Board would embark on a program to effect an educational redesign of Lane. The program visualizes forming an advisory commission to plan a "new school" to be phased into the existing Lane educational setting as that is transformed by the new plan. Community representatives, elected city and state officials, public school educators, college representatives and labor union personnel as well as faculty and other interested persons are considered as sources to be levied upon to staff the commission. Work would begin at once to convert Lane into a comprehensive high school as distinguished from, e.g., a vocational or an academic high school. The educator-membership of the commission would, as a task force, do the drafting in the first instance, and report to the commission, and, through it, to the Chancellor, who would be represented on the commission by High School Division personnel. The re-design task force would have, as a second aspect of its work, the informing of entering students and parents about the expanded educational programs. One suggested new design would divide the school into four schools within the school, each of which would be organized around a central educational theme and be headed by an assistant principal; each such inner school would have guidance staff and an organized pupil personnel service. Teachers and supervisors would, essentially, be assigned to separate schools with instructional service across sub-school lines kept to a minimum, except of course for such central services

library, laboratory, shop and gymnasium. The component schools are envisaged as schools that might choose among civil service-municipal career preparation, or transportation and traffic management, or urban studies, or behavioral science, or criminal justice, or labor relations, or ecological science (including conservation), or commerce and business, or communication arts. The program would employ aggressive publicizing of what was being done throughout the city generally. An effort would be made to maintain liaison with feeder schools and the Board's administration. In developing specific programs of studies with the new sub-schools advantage would be taken of work already done at other schools in the planning of programs which have included mini-courses, a broader than usual range of electives, interchange of course offerings between and among schools, out of school offerings, vocational try-outs for aptitude exploration, and the like. There is some backlog of experience in working in this program direction. It is recognized that guidance activities would be necessary, and, indeed, that guidance would have to pervade any implementation of the ambitious program. Funding is visualized as a problem but one which is not seen as hopeless.

The controversial parts of the Board's program, and these will be returned to after the other suggested programs are explained, are, <u>first</u>, and foremost, those relating to delay in the implementation of the program until September 1975, and, <u>second</u>, the addition to the Lane zone of parts of the present zones of Grover Cleveland, Richmond Hill and John Adams High Schools. A part of the program that received little attention during the hearings, and, apparently, at the earlier meetings, was the reassignment of the students from that part of the old Lane zone at its west end who will not be specifically zoned into any other school, but will fall under an elective program

which will inevitably require substantial travel on their part to reach any of the schools open for their election.

Plaintiffs do not propose an independent plan. However, they emphatically contend that the Board's plan should be implemented forthwith in September 1974. Specifically, the plaintiffs would approve the geographical zone changes but would favor either initiating the whole zoning program in September 1974, that is, in effect, accelerating by one year the second implementive scheme of the Board's proposal, or, at minimum, commencing in September 1974 with reassigning the children from the westernmost part of the present Lane zone, admitting students from the rest of the existing Lane zone in September 1974, and thereafter proceeding with the Board's plan on either one of its schemes of implementation.

The Coalition Proposal would alter the present Lane zone to the extent only of making Pennsylvania Avenue its westerly boundary, thus adding to the portion of the present Lane zone that the Board would delete a wedge-shaped area between Pennsylvania Avenue at the east, Liberty Avenue at the south, and East New York Avenue at the northwesterly side. (Stone Avenue would define the extreme west end of the wedge.) The children zoned out of the Lane area would go to one or another of the same high schools listed in the Board's Plan plus Wingate, Midwood and Tilden High Schools, none of which is included in the Board's list. (On data available at the time of the trial, Wingate was six percent "other", 9.1% Puerto Rican and 84.9% black; Midwood was 71.3% "other", 2.6% Puerto Rican, and 26.1% black; and Tilden was 59.6% "other", 5.3% Puerto Rican and 35.1% black.) As submitted the Coalition Plan would assign children not opting one of the listed schools to either Boys High School or Prospect Heights High School. However, that was on the assumption that there had

to be a final assignment to some school. The Board, in explaining its plan, made clear that the options extended to the students zoned out of Lane would be limited to the listed high schools one of which would have to be accepted; there would be no zone or other assignment for children failing to elect one of the designated schools. The Coalition, understanding that it is possible to set up a series of alternative schools and require a choice among them, would, it is understood, delete the clause providing for last resort assignment to Boys High or Prospect Heights. The Coalition Plan would, it was estimated over the period of aplication reduce the Lane school population to 2,500 students from the revised zone. The additional space available would then be utilized as seating for about 1,000 students to be attracted to Lane by a Magnet Program. The Magnet Program would be developed by a task force consisting of Lane's Parent Association, community representatives and professionals, who would also evaluate the effectiveness of the school's operation with a view to offering suggestions for improving it. The final aspect of the Coalition Plan would be Court appointment of a monitor to review and evaluate the implementation and operation of the Plan, and to confer periodically with the Parents Association of Lane and with community representatives.

The Coalition Plan would be put into effect forthwith, except that the Magnet Program, which would require departmental work, would not be put into operation until September 1975.

It is pointed out in support of the Coalition Plan that the history and reputation of Lane have been such as affirmatively to discourage those in Lane's present district, and the plan counts on a very considerable gain in school attendance from

Lane's present zone after the cutting off of the part west of Pennsylvania Avenue.

Assemblyman Vito P. Battista, whose district includes a part of the Lane school district, who is a member of District School Board 19, and who has been an educator by profession, proposed a plan similar to the Coalition Plan in that it would establish the west boundary of the Lane school district at Pennsylvania Avenue and otherwise retain the present boundaries. This, he estimated, would reduce the school enrollment to perhaps 3,000 or 3,500 students when the full effect of the rezoning of the school was felt. However, his plan suggests the incorporation into Lane of a high school of science similar to Bronx High School of Science, a school that would be completely unzoned but would form a highly attractive and accessible specialty school of the Bronx High School of Science type for the Brooklyn-Queens area (Bronx High School of Science is not a zoned high school but one which derives its student body from admission examinations). Mr. Battista considered that the establishment of such a dual school program for Lane would result in its becoming a viable community school with a first-rate educational program.

At the hearing held on August 2, 1974, and continued on August 5, 1974, the evidentiary presentation on the part of the Board was concentrated on a demonstration that it would be difficult to implement any part of the Plan of the Board of Education in September of 1974. Specifically the Board's evidence, presented through a witness unquestionably qualified by his educational, administrative and executive experience, was that to implement the Plan, even to the limited extent of reassigning the students living in the area that the Board proposed to exclude

from the Lane zone for the coming school year of 1974, would not be insurmountably difficult but could not possibly be done optimally or in the manner usually employed in comparable situations to obtain a satisfactory result. To reassign students to schools other than those which at the close of the school year they were being prepared to enter would require, in substance, educating both child and parent in the occasion for the change of assignment, its justification and the nature, limitations and problems of the choice open to the student. Definite guidance would desirably have to be given individually to the parents and children. Such guidance preferably takes the form, in the regular school year, of extending to parent and child the opportunity to visit the prospective school, and giving guidance counselling in group and in supplementary individual meetings in the course of the regular school year and in the school setting. To compress that indoctrination into the time remaining before the new school year begins on September 9, 1974, is thought to involve such genuine difficulties that the risks of ineffective and inefficient execution are high. The neighborhood being excluded from the Lane zone is observably a run-down area in which there has been much deterioration of building fabric and which has become ghetto-like in the poverty of its inhabitants and their overall unresponsiveness to the educational situation. Such a community is among the most difficult to reach: the truancy rate is high and assurance of communication with the school and its guidance services is very low.

None of this can be or has been challenged. On the other hand it is evident that in one sense the children from the area to be assigned out of Lane are precisely the children who have been unconstitutionally discriminated against, because they have been zoned into a school which by the standards of the

city wide school system is a de jure segregated school district. Relief of the children from this area from invidious discrimination and relief of other students in the district similarly situated has been and remains the goal of the litigation. It is not correct to think of the case as seeking to achieve a better racial and ethnic balance in the school, and to define that in terms of the highest feasible percentage of "other" population in the school. Redressing imbalance is a mathematical consequence of measures taken to eliminate invidious discrimination. Comparative imbalance between schools in the same city wide school district, for the same reason, discloses the existence of de jure segregation, of invidious discrimination.

The institution of the present suit and the perfectly clear decision in the present case in April of 1972, should as a matter of course, preferably in September of 1972, certainly in September of 1973, and necessarily in September of 1974 have resulted in either the voluntary rectification of the Lane situation or - now - an aggressive and specific commencement upon the task of eliminating the invidious discrimination. The April 1972 Memorandum and Order were perfectly clear in saying

> "The consequence, with equal inevitability, however, is that the Board's school zoning is specifically advertent to the existence of racial and ethnic imbalances and to the dilution or deprivation of educational opportunity implicit in it, and in its zoning the Board deals insistently and directly with the ethnic composition of the schools; where segregation in an objectively invidious sense is the result, it is de jure segregation and is not an uncured consequence of housing patterns helplessly submitted to as beyond the reach of feasible compensatory planning ...
>
> "Here the Lane zone has no school-house centricity. A 'neighborhood zone,' in the sense of a zone which extended outward from the school-house along routes of convenient access in geographical coherence around the school is not present. Lines drawn in that way to enclose a school district would radically change the ethnic distribution of the Lane school population. That is evident from the data on the populations of Grover

> Cleveland, Forest Hills, Richmond Hill and Jamaica High Schools, all of which are over sixty percent 'other,' and from the 1970 census tract data on 'General Characteristics of the Population' and 'Occupancy, Utilization, and Financial Characteristics of Housing Units.'
>
> "Prima facie, an objectively segregated school zone thus appears to have been established and adhered to in a series of zonings that has tended advertently to reinforce rather than to mitigate the educational disadvantage of an imbalanced school.
>
> "... Certainly an imbalanced school is not invidiously segregated per se if its imbalance is a result of housing patterns only ... but that appears to be not the present case. Here, an artificial and irrelevant factor appears to have intruded, the boundary between the boroughs, and to have exerted an unjustified influence on the zone planning."

While other considerations of great importance prevented either the granting to the plaintiff of preliminary relief by injunction or the granting of the Board's motion for summary judgment, the principles were perfectly implicit and should not have required any further judicial intervention in the light of the Board's alertness in the past to the obvious implications of its segregation problem and the known attitudes of the State Commissioners of Education over the last dozen and more years.

All those who were heard either during the hearing on August 2 and August 5 or in written submission appear to be substantially unanimous that the exclusion from the Lane zone of the part which the Board's plan proposes to exclude is desirable. However, it is at once apparent that the removal of the area has not been accompanied by zoning that same area into any other school zone and consideration of the data with respect to the other schools will explain why that was not done. The school zones contiguous with that part of the Lane zone are those of Bushwick, Boys and Jefferson High Schools. At the date of trial Bushwick High School was 17% "other," 47% Puerto Rican and 36% black, Thomas Jefferson was 5.1% "other," 27.7% Puerto Rican and 67.2% black and Boys High School was 1.8% "other," 7.9%

Puerto Rican and 90.3% black (see Memorandum and Order of May 16, 1974, page 13). To re-zone the area removed from Lane into any of the other school districts would not relieve against but would worsen invidious segregation or, at best, fail to alleviate it. Reassigning the children from the deleted area as proposed by the Board is a substitutional expedient, but no better means of desegregating Lane is visible. The children assigned to the eleven schools will have to travel varying and, in most cases, substantial distances to reach the assigned schools. Reliance must be placed on the Board's resourcefulness in obtaining adequate transportation for the children and in making the best possible reassignment taking into account the expressed and reasonable wishes of each child and his or her parents to reduce the burden of travel to a minimum. But it must be emphasized that it is these children who are those whose lot is the matter of central and first concern from the very nature of the present case.

While it is regrettable that the Court's action was not taken sooner, there may not be a delay of a further school year in carrying out the reassignment of the children in the area deleted from the Lane zone. An extraordinary effort must certainly be exerted. It is estimated that no more than approximately 600 children are involved and the resources and resourcefulness of the Board must be marshalled to the effort forthwith.*

The critical difference between the Coalition Plan and the Board's Plan is in the Board's proposal that areas be deleted from the Grover Cleveland, Richmond Hill and John Adams school zones and added to the northeastern and southeastern boundaries of the Lane zone as shown on the attached map. The central thesis of the Coalition Plan is that Lane has in substance broken down as the neighborhood high school which it, potentially, has been and remains; that because of the problems that accumulated upon

Lane, it has become over the years an ever less attractive school for the people in its immediate neighborhood and that they have deserted it in favor of election to attend diocesan high schools and other denominational institutions and private schools, and through using "false" addresses have managed to gain admission to other New York City High Schools regarded as more satisfactory. In general, the Board of Education concurs that the situation at Lane has over the years become such that it has lost a part of its natural student constituency to other schools and to subterfuges calculated to make possible attendance at other public high schools. The Board notes also that the condition at Lane has no doubt resulted in resort to other legitimate means of obtaining public high school education, such as choosing to apply to one or another of the unzoned special schools that exist within the City system.

It is extraordinarily difficult to determine what additional neighborhood school population would be available to Lane if it was presenting the optimum educational program for its area. One of the community representatives (and the contributions of these representatives to the hearing and to efforts to improve the school situation through direct communication with and action directed to the Board of Education cannot be overestimated or overpraised) has supplied data based on a canvas of 11 parochial schools in the area indicating that in the current year they graduated some 733 students resident in Franklin K. Lane's zone. The data available indicated that not more than 42 have chosen to register in Lane, although the parochial school authorities had indicated that less than half of the graduates were expected to attend diocesan or other denominational high schools. It was definitely estimated that 157 graduates would go to public high schools somewhere and somehow, either by subterfuge or through attendance at special schools in preference to Lane. It was

estimated that potentially there could be in the order of 350 to 500 additional students available from the parochial school and similar feeder sources to the truncated Lane school zone with additions made to the zone from the other school zones. Hence, the Coalition Plan places primary emphasis on creating in Lane an educational program and atmosphere so attractive that the children residing in the zone as truncated, will elect to attend Lane and not to avoid it. The Coalition Plan also recognizes that in any case the result would be to leave additional space estimated at 1,000 places, and that the places could be the core space for a Magnet Program to be developed, as explained above, through a task force.

It may be assumed that such an effect as the sponsors of the Coalition Plan project for their plan would result, but it is concluded that, without the addition of children zoned from outside the present zone, the goal of desegregation would not be measurably and assuredly achieved. The plan would result, in high probability, in a school with substantially less than 50% "other" population, and there is no practical way of determining how far below 50% the "other" population would fall. The Coalition Plan would prevent any substantial diminution of the "other" percentages in Grover Cleveland, Richmond Hill and John Adams High Schools, except that which would result from two sources in the case of Grover Cleveland (reassignments from Lane and demographic change), and from the continued trend in the schools of the City to an increase in Puerto Rican (or other Spanish speaking) and black school population in the case of Richmond Hill and John Adams High Schools. The addition of the areas from the three high schools to the Lane zone does appear, on the Board's projections, to result in an increase in black and Puerto Rican population

percentages in Richmond Hill and John Adams; inferentially, that is the result of differences in the population ratio in the zones as they remain after the transfer to Lane of the areas contiguous with Lane's present zone. In the case of Grover Cleveland the increase in black and Puerto Rican population ratios would be at least in some part due to the expected exercise of options to attend Grover Cleveland on the part of the children in the area to be excluded from the Lane zone. However, the argument cannot genuinely be made that the result is arbitrary, or invidiously discriminatory against the children in the Grover Cleveland, Richmond Hill and John Adams High Schools or the children who will now be in the expanded Lane zone. None of these children will be sent arbitrarily to a distant school to create a balanced school population; all are to attend schools arguably their neighborhood schools and within reasonable distance of them. The schools themselves, on the projections made by the Board, cannot be regarded as segregated schools and, certainly, not as schools segregated invidiously against white children.

The hearing brought out references to the difficulties of transportation that will be experienced by some of the students being zoned into Lane. It was explained that in part this is due to the pattern of public bus routes. The bus lines are not all Metropolitan Transit Authority bus lines (some are privately owned franchised buses). Queens bus routes are oriented mainly east and west, and north-south routes are wide-spaced. One consequence, it is said, is that children from the southeasterly part of the area added to Lane from John Adams will have to take three buses to reach Lane, although they are practically within walking distance of John Adams High School. While transportation difficulties will exist for some, particularly in consequence of the park and the cemeteries northerly of the Lane school building, that

would not appear to be true of the generality of the children who will be attending Lane from the added areas. Some of the students will not have as convenient public transportation in going to Lane as they would in going to the schools which they would have attended but for the re-zoning. On the other hand, the Lane zone as it has existed has involved long travel distances for the students coming from the south end of the zone and from the west end of the zone. The extremities of the Lane zone as it existed before the proposed re-zoning are more distant than the most distant parts of the new zone. Moreover, there is, again, reason to rely on the Board of Education's capacity and will to ameliorate transportation problems that may crop up through either the establishment of special school buses by the MTA or through contract bus arrangements.

The letters addressed to the Court contain many assertions by parents that if the Board's Plan is adopted, they will not send their children to Lane because of its inadequacy as a school, the personal security risks that they believe their children will assume, and the children's loss of their assumed "right" to attend a nearer, safer and better public school. In some instances parents insist that their children be permitted to attend -- and that they shall attend -- the schools nearest to them, meaning Grover Cleveland, or Richmond Hill, or John Adams, rather than Lane.

Again, no child now attending any of the High Schools involved -- Grover Cleveland, Richmond Hill, John Adams, or Franklin K. Lane -- will be transferred to any other school. Moreover, what kind of school a particular school is, and how good its programs are, depends not on its past but on its present, including the transformation -- great or small -- of the school that results from rezoning and the drawing of children into the school's student body from different communities with different educational needs

and goals and insistences. It is imperative, however, that parents and children understand that there is no preemptive right to attend any particular school on the basis of convenience of access to it and approval of its particular program. All the schools are public schools, and are, alike, public property and a public trust. They must be administered in the interest of the entire population. Proximity to a particular school is a circumstance always taken into account in drawing zone lines, and in determining the high schools that graduates of "feeder" schools will be assigned to attend. Proximity to a high school, nevertheless, is not and must not be regarded as determinative, and as establishing in parent and child a legal right of future attendance at that very school. All students are alike entitled to free public education, and all are equally entitled to have free public education extended to them without invidious discrimination by reason of color, island origin, religion or other such circumstance. The public responsibility to meet each one of the public duties owed to all citizens equally inevitably results in the imposition of inconvenience on some. It is easy, here, to see that the obvious, inevitable and greatest hardship is being imposed on the children in the district west of Pennsylvania Avenue who are taken out of the Lane zone. Their situation is such that, if they were zoned into any other school of convenient location, they would achieve no alleviation of the existing invidious discrimination to which they, primarily, have been subjected. It is they who will bear the heaviest burden of the constitutionally necessary desegregation effort.

There is no disguising the fact of inconvenience and the existence of disadvantage. But there is no escape from the changes that the City is experiencing; what has been said in the many letters and during the hearing emphasizes that in the present phase of the change pattern in the greater metropolitan area

removal of middle and upper income families with school-age children to the suburbs and to "exurbia," the use of subterfuge to avoid attendance at particular public schools, and the election to attend denominational and private schools unite to worsen the lot of those who cannot afford to or who disdain to give up their settled residences and their zone schools. But the undeniable changes leave the Board of Education no alternative but to develop such plans as that here presented to eliminate unconstitutional segregation and serve adequately the educational needs of the whole body of school-age children.

It is concluded that the Board's plan must be approved and adopted with the modification that the assignment among the eleven high schools** named in the Board's plan of the children from the area deleted from the Lane zone shall be effected for the school year commencing in September 1974. The Board's plan is adopted and approved on the basis of the Board's preferred scheme of implementation (alternative A) except that no children from the area to be deleted from the Lane zone under the plan will be admitted to Lane for the school year commencing in September 1974 but those children must be reassigned among the eleven high and vocational high schools listed in the plan.

A separate form of final judgment has been approved for signature by the Clerk.

It is so ORDERED.

Brooklyn, New York
August 8, 1974

U. S. D. J.

*It was brought out at the hearing that in the 1973-1974 school year there was a very substantial reduction in admissions to Lane from the area to be excluded, under the Board's plan, from Lane. Plaintiffs' counsel produced a schedule indicating that two of the "feeder" schools in the area (I.S. 55 and I.S. 271), expected to send 467 children to Lane in the current year, sent only 34.

students to Lane in 1973-1974. This seems to have been accomplished by the Board's including in Lane's 1973-1974 zoning description a provision that "[p]upils from I.S. 271 and 55 will choose to attend either Wingate, Jefferson, Boys High School, Madison or Midwood." It was asserted that a substantial reduction in tensions resulted. In the Board's 1974-75 zoning description (issued before May 16, 1974) it is provided that, "In the Spring, after Education Options and Free Choice placements have been completed, graduates of I.S. 55 and I.S. 271 who reside in the Franklin K. Lane zone may opt for the Open Admissions Program together with the other designated sending schools." No data have been furnished on the effect, if any, of the option on expected Lane attendance.

**The Coalition Plan would have added Wingate, Midwood and Tilden High Schools to the list presented by the Board of Education. Both Tilden and Midwood were included in the Board's 1973-1974 list of schools opened to the choice of I.S. 55 and I.S. 271 pupils.